Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

DENNIS DUBUC,

Petitioner,

v.

MICHIGAN BOARD OF LAW EXAMINERS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A statutory condition for membership in the State Bar of Michigan requires an applicant prove "good moral character" to the "satisfaction" of the licensing body (the State Board of Law Examiners). This process begins with initial assessment of an applicant's character by staff of the State Bar of Michigan, proceeds through multiple levels within the State Bar, and advances to ultimate decision by the Board. This determination of licensing eligibility occurs without objective criteria, or substantive limitations, on decision-making at any level of decision.

1. Is this condition facially invalid under the void-for-vagueness or overbreadth doctrines since it fails to give notice of disqualifying behavior, permits arbitrary decision-making and/or operates to inhibit the exercise of First Amendment rights?

2. Is the Michigan licensing review of an applicant's "good moral character" facially invalid under the First Amendment since it lacks adequate procedural safeguards (narrow, definite and objective criteria; time limits on decision-making; and/or, a provision for prompt judicial review in the event of denial), thus functioning as an unlawful prior restraint?

3. Did the Michigan licensing body use its unbridled discretion to assess First Amendment activities of applicant Dubuc, in particular, his criticism of two public officials (a judge and a government lawyer) while a *pro se* litigant? Was the licensing body's denial of character certification an unconstitutional retaliation for the exercise of fundamental rights, and/or which violated the unconstitutional conditions doctrine, because the board impermissibly

conditioned receipt of a benefit to disfavor with protected speech?

PARTIES TO THE PROCEEDINGS

Petitioner

Dennis B. Dubuc. Petitioner is an individual. There are no corporate affiliations.

Respondent

The Michigan Board of Law Examiners.

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OPINIONS BELOW

The opinion of the Michigan Board of Law Examiners (MBLE), issued on July 6, 2000 (dated June 9th), rehearing denied on February 7, 2001, is unreported and is reproduced in the Appendix (App. B, beginning at 2a).

The order of the Michigan Supreme Court, dismissing Petitioner's complaint for review of the MBLE's decision, Dubuc v State Board of Law Examiners, __ Mich __, 627 NW2d 603 (2001), is reproduced in the Appendix (App. A, beginning at 1a).

BASIS FOR JURISDICTION

The Michigan Supreme Court dismissed Petitioner's timely filed complaint for review on May 29, 2001. This petition for writ of certiorari is filed within ninety days of that date. 28 USC § 2101(c). This Court has jurisdiction by virtue of 28 USC § 1254(1).

REGULATORY PROVISIONS INVOLVED

Michigan Statute Concerning the State Bar of Michigan, MCL 600.934, Qualifications for Admission to the Bar

This statute provides in sub-part (1):

> "A person is qualified for admission to the bar of this state who proves to the satisfaction of the board of law examiners that he or she is a person of good moral character, ..."

The entire text of this statute is reproduced in the Appendix (App. C, beginning at 12a).

Michigan Rules Concerning the State Bar of Michigan, Rule 15, Admission to the Bar, Section 1, Character & Fitness Committees

This rule provides in sub-part (15):

> "An applicant has the burden of proving by clear and convincing evidence that he or she has the current good moral character and general fitness to warrant admission to the bar."

The entire text of this rule is reproduced in the Appendix (App. D, beginning at 15a).

STATEMENT OF THE CASE

The Michigan Board of Law Examiners (MBLE) refused to certify Dennis Dubuc (Dubuc) for admission to the State Bar of Michigan (SBM) on the basis that he lacked good moral character because the MBLE disapproved of First Amendment activities in which he engaged while a *pro se* litigant, when he was in law school.

The Michigan statute, MCL 600.934(1); MSA 27A.934(1), states that an applicant for membership in the SBM must prove "good moral character" to the "satisfaction" of the MBLE. The administrative regulation promulgated by the Michigan Supreme Court, rule 15, section 1, sub-part (15), states that the applicant must establish character fitness

("current good moral character and general fitness") by clear and convincing evidence.

Nowhere do the Michigan regulations give notice that an applicant's First Amendment activities may be used as a basis for character certification. However, because of the unbridled discretion in the licensing process, the MBLE uses this general review of character fitness to evaluate First Amendment activities. In denying character certification to Dubuc, the MBLE said his expressive activities were the "primary concern."

The MBLE issued its decision on July 6, 2000. Dubuc sought rehearing on his constitutional and other claims, which was denied on February 7, 2001. Dubuc sought judicial review by filing a timely complaint for superintending control with the Michigan Supreme Court, which is the review procedure under Michigan law, MCR 7.304, from a decision of the MBLE. However, the Michigan Supreme Court refused to grant review of his constitutional and other claims, and dismissed the petition on May 29, 2001.

The MBLE denied Dubuc character certification because of criticism he leveled against two public officials in 1995, and because he defended his actions in the licensing hearing before the MBLE. These two officials, one a governmental attorney (an appointed public official for a local Township) the other a judicial officer of the local circuit court (an elected public official), were involved in litigation in which Dubuc was a party. Dubuc criticized these officials during his *pro se* litigation and in written complaints filed with Michigan oversight bodies, which requested that the officials be investigated. He documented his complaints with third party affidavits.

The Township attorney, Raymond Clevenger, represented the Township in state court litigation and was himself a defendant in Dubuc's federal civil rights lawsuit that arose from his problems with the Township involving the construction of commercial buildings, and related issues. See Dubuc v Green Oak Twp., 810 F Supp 867 (ED MI, 1992) and Dubuc v Green Oak Twp., 958 F Supp 1231 (ED MI, 1997).

The circuit judge presided over the state court lawsuit and had favored the Township in certain key decisions. One such ruling prevented the testimony of the top Michigan construction official, Henry Green, the executive director of the Michigan Bureau of Construction Codes, which is the executive arm of the Michigan Construction Code Commission, MCL 125.1501 *et seq*; MSA 5.2949(1) *et seq*. Mr. Green was in the courtroom and ready to testify in Dubuc's favor on a highly critical issue – that the buildings in question were safe for occupancy under the Michigan code and need not be vacated as the Township advocated. Mr. Green's affidavit on the matter, filed in both the federal proceeding and in Dubuc's licensing hearing, states in part: "The Court talked with me in chambers, but did not allow me to testify for the record."

Another circumstance behind Dubuc's criticism involved the judge's refusal to regard the testimony of another local developer (Nicholas Zander), who testified in Dubuc's favor in the state court matter and who also described the attempt of Clevenger, the Township attorney, to suborn perjury immediately prior to Mr. Zander's testimony. (The Township attorney offered to "fix" a development issue Zander had with the Township if he testified in support of the Township. Zander declined and his problem not only was not fixed, the Township retaliated against him.) Zander's affidavit

was also filed in Dubuc's licensing hearing, and in the federal proceeding as well.

Dubuc expressed criticism of those two public officials in the state court proceeding, and in written complaints to the Michigan Attorney General, Michigan Judicial Tenure Commission, and Michigan Attorney Grievance Commission. He supported those complaints with the affidavits of Henry Green and Nicholas Zander to document the circumstances behind his requests for investigation to those oversight bodies.

In examining Dubuc's First Amendment activities, the MBLE described his complaints about those two public officials as being the "primary concern" in its assessment of character fitness and in the resulting denial of character certification. The MBLE stated (App. B at 6a):

> "Of primary concern to the Board is Mr. Dubuc's allegations made in open court and contained within his Complaint to the Attorney General about Judge Burress being engaged in criminal activity. At a hearing September 27, 1995, Mr. Dubuc stated, 'It is you and Mr. Clevenger as co-conspirators against Dennis Dubuc'. This allegation was followed by the following statement taken from the [circuit court] transcript dated October 6, 1995:
>
> > 'I want the court to be aware that I filed criminal charges against yourself yesterday and Mr. Clevenger for conspiracy, for bribery, and bribery attempt, and for abuse of process...'"

The MBLE further stated it was concerned with Dubuc's "inability or refusal to accept responsibility for his actions" (App. B at 5a-6a) and concluded that his "explanation and refusal or inability to accept responsibility for his statements is unacceptable." (App. B at 7a)

In denying character certification to Dubuc, the MBLE failed to apply First Amendment principles to its decision-making. The MBLE refused to apply New York Times Co. v Sullivan, 376 US 254, 270-271, 84 S Ct 710, 721, 11 L Ed 2d 686 (1964), which established a subjective actual malice standard for criticism of public officials. It failed to adhere to the unconstitutional conditions doctrine, Perry v Sindermann, 408 US 593, 597, 92 S Ct 2694, 2697-2698, 33 LEd 2d 570 (1972), which forbids linking governmental benefits to the exercise of fundamental rights. It failed to recognize that a citizen has a right to petition governmental bodies for consideration of grievances, which is protected by the Petition Clause of the First Amendment. Valot v Southeast Local School District Bd. of Education, 107 F3d 1220, 1226 (6th Cir. 1997).

Dubuc's licensing process began when he submitted his application to the SBM in late 1997 a few months before graduation from law school. The SBM, as described further below, undertakes the initial review of every application, acting as administrative staff for the MBLE. Dubuc's application was supported by six (6) statements attesting to his honesty and/or character, five from individuals and one from his law school, the Detroit College of Law. In the proceedings before the MBLE, Dubuc submitted 17 additional character affidavits, plus a written report from a licensed psychologist, Dr. Charles Clark. These attested to his good character and honesty.

This evidence, by ordinary scrutiny and conventional assessment, would compel the conclusion that Dubuc possessed good moral character generally, and for licensing as an attorney. In particular, Dr. Clark, the psychologist, testified that his findings were favorable and did not indicate any disqualification for character fitness. (MBLE Opinion, pp 2-3.) *Cf.* MCL 338.41; MSA 3.981(41) which defines "good moral character" for occupational and professional licensing in Michigan, generally, as the propensity to serve the public in a fair, honest, and open manner. This definition is adopted in MCL 600.934(2) for attorney licensing.

However, under the Michigan regulations for State Bar membership, the determination of an applicant's "good moral character" occurs in a process that allows unbridled discretion at every administrative level, up to and including the final decision by the MBLE. Rule 15, section 1, sub-part (5) describes this procedure, in sub-sections (a) to (g).

After an application is filed with the SBM, it is referred to SBM staff, which is empowered to make a favorable recommendation "... when investigation of all past conduct discloses no significant adverse factual information." Rule 15, section 1, sub-part (5)(a). This staff waiver, and determination of fitness, is conducted without any criteria or other limit on the exercise of staff discretion.

If SBM staff reaches an unfavorable conclusion regarding an applicant's character, the matter is referred to a district committee, unless the chair or other member of the standing committee "... determines that any adverse information reflected in the file would under no circumstances justify ..." an unfavorable finding regarding character fitness. If the chair or other member so determines, the application is forwarded to the MBLE with a favorable recommendation.

Rule 15, section 1, sub-part (5)(b). This review, this determination of fitness, is conducted without any criteria or other limit on subjective judgment.

Where the district committee undertakes an evaluation of an applicant's character, it does so (sub-part (5)(c)) "... by informal interview and any additional investigation which to them seems appropriate." The district committee makes a written recommendation to the standing committee. This review, this determination of fitness, is conducted without any criteria or other limit on subjective judgment.

Upon receipt of a district committee report, the standing committee (sub-part (5)(d)) may endorse it or consider additional information "... that it deems necessary." This review, this determination, is conducted without any criteria or other limit on subjective judgment.

If the standing committee endorses a district committee report of an applicant's satisfactory character (sub-part (5)(e)), the standing committee transmits that favorable recommendation to the MBLE. This endorsement determination is conducted without any criteria or other limit on subjective judgment.

If the standing committee endorses a district committee report of an applicant's unfitness (sub-part (5)(f)), the standing committee conducts a formal hearing if requested by the applicant. The applicant bears the burden of proving the existence of good moral character (sub-part (15)) by clear and convincing evidence. However, this determination is made without any criteria or other limit on subjective judgment.

If there is an unfavorable determination at any one of these SBM stages (*i.e.*, staff level, district committee or

standing committee), the applicant may choose to acquiesce and be eligible to re-apply for admission in three years (sub-part (17)).

An applicant is entitled to a hearing by the MBLE regarding an adverse character recommendation (sub-part (20)). However, the regulations place no limits on the MBLE's exercise of discretion, saying only that it must be "satisfied" that the applicant has good moral character.

In addition, if the applicant challenges an adverse ruling by the standing committee and seeks review by the MBLE, the regulations impose a more severe penalty when the MBLE rules against the applicant. In that event, the applicant suffers a five-year period of ineligibility, (sub-part (18)). That is the consequence in Dubuc's case.

The administrative process for assessment of an applicant's character fitness is indefinite. In Dubuc's case more than three years elapsed from initial staff review through final action of the MBLE. He applied for membership in October 1997. SBM staff referred his application to a district committee in April 1998. The district committee ruled against him that month. He appealed to the standing committee, which did not issue a ruling until June 1999. Dubuc appealed to the MBLE, which issued an opinion on July 6, 2000 (dated June 9th) and denied rehearing on February 7, 2001. Had he acquiesced in the negative assessment by staff (or the district committee's) in April 1998, he could have re-applied in April 2001. But he exercised his appeal rights to the MBLE and, because those proceedings ended in February 2001, he cannot re-apply until February 2006.

The Michigan licensing procedure for membership in the State Bar of Michigan regarding the assessment of an applicant's "good moral character" lacks adequate procedural safeguards at every stage of the process. It authorizes unbridled discretion, keenly evident in the MBLE's decision to use Dubuc's complaints about two public officials (that were supported by affidavits from Henry Green and Nicholas Zander) against him in the licensing decision. Dubuc's activities are clearly protected by both the Speech and Petition Clauses of the First Amendment.

The words of Nicholas Zander (who described the Township attorney's attempt to suborn perjury, which the circuit judge ignored) are powerfully discordant in juxtaposition to the MBLE's licensing decision. The following is from ¶11 of Mr. Zander's affidavit, which Dubuc filed with his complaint for investigation with the Michigan authorities:

> "I was born in a Communist country. As a young man, I was subjected to Tito's horrendous system of government where taking a man's cattle, his wheat, his land - his very livelihood, without benefit of judge or jury, was an everyday occurrence. A place where being on the wrong side of some petty politician could cost you your freedom or your life. I risked my life to escape that oppressive system. It is absolutely intolerable for me to witness this sort of corruption - here in America where I never dreamed I would see it."

The actions of Dubuc are fundamental in a democratic society, and his criticism and written complaints addressed

public policy concerns of the first order. The MBLE violated the First Amendment by using protected First Amendment activities as a basis for evaluating character and in denying admission to the State Bar of Michigan. Furthermore, the Michigan licensing procedure is indefinite both substantively and procedurally, and patently violates the Constitution.

REASONS FOR GRANTING THE WRIT

I.

IN ITS REFUSAL TO GRANT REVIEW OF DUBUC'S CONSTITUTIONAL CLAIMS, THE MICHIGAN SUPREME COURT EFFECTIVELY DECIDED THE QUESTIONS PRESENTED IN A WAY THAT DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND THOSE OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT. THESE CONFLICTS ARE SET OUT IN THE THREE SUB-ARGUMENTS BELOW.

I A.

THE LACK OF PRECISE STANDARDS RENDERS THE MICHIGAN LICENSING PROCEDURE VOID FOR VAGUENESS AND, SINCE IT OPERATES ON EXPRESSION, IT IS INVALID UNDER THE OVERBREADTH DOCTRINE AS WELL.

The State of Michigan in an exercise of sovereign authority empowers a licensing body, the Michigan Board of Law Examiners (MBLE), to use unrestrained discretion to decide whether an applicant has sufficient character to merit licensing. The standard of decision is open-ended and impermissibly vague. *Cf.* National Endowment for the Arts v Finley, 524 US 569, 588-89, 118 S Ct 2168, 2179-80, 141 LEd2d 500 (1998). The absence of precise standards in such a regulatory scheme permits arbitrary decision-making, fails to afford notice of sanctionable conduct, and chills the exercise of constitutional rights. Such an imprecise regulatory scheme is facially invalid under the void-for-vagueness doctrine. Gentile v State Bar of Nevada, 501 US 1030, 1082, 111 S Ct 2720, 2749, 115 LEd2d 888 (1991), City of Chicago v Morales, 527 US 41, 52, 119 S Ct 1849, 1857, 144 LEd2d 67 (1999), United Food & Commercial Workers Union, Local 1099 v Southwest Ohio Regional Transit Authority, F3d 341, 358-359 (6th Cir. 1998) and Putnam Pit, Inc. v City of Cookeville, Tenn., 221 F3d 834, 845-846 (6th Cir. 2000).

Further, because the Michigan procedure operates on protected expression, it is invalid under the overbreadth doctrine, as well. In re Chmura, 461 Mich 517, 530 (2000) and United Food & Commercial Workers Union, Local 1099 v Southwest Ohio Regional Transit Authority, *supra* at 361-362. Although the Michigan regulations nowhere say that an applicant's First Amendment activities are to be used as a basis for character certification, the MBLE used its unrestrained power to evaluate the First Amendment activities of Dennis Dubuc and said they were the "primary concern" in his licensing decision. The wide sweep of the regulations allowed, and established administrative practice caused, this consequence in Dubuc's case and will do so again. There is a clear chilling effect produced by the indefinite Michigan licensing procedure. Secretary of State of Maryland v Joseph

H. Munson Company, Inc., 467 US 947, 956-957, 104 S Ct 2839, 2846-2847, 81 L Ed 2d 786 (1984).

The licensing process for membership in the State Bar of Michigan violates the First and Fourteenth Amendments.

I B.

THE PRACTICE OF LAW IS A FUNDAMENTAL FIRST AMENDMENT ACTIVITY. LICENSING FUNCTIONS AS A PRIOR RESTRAINT AND MUST HAVE ADEQUATE PROCEDURAL SAFEGUARDS. THE UNBRIDLED DISCRETION IN THE MICHIGAN LICENSING PROCEDURE PATENTLY VIOLATES THE FIRST AMENDMENT.

An attorney is licensed to be a professional advocate. The practice of law is a profession of advocacy, one that consists of the daily expression of ideas for the redress of common law claims, statutory rights, equitable interests and/or constitutional rights, and for the development of new legal theories. The practice of law is a fundamental First Amendment activity. Legal Services Corporation v Velazquez, 531 US 533, 121 S Ct 1043, 1049, 149 LEd2d 63 (2001). See, also, Riley v National Federation of the Blind of North Carolina, Inc., 487 US 781, 108 S Ct 2667, 101 L Ed 2d 669 (1988) and Lakewood v Plain Dealer Publishing Co., 486 US 750, 108 S Ct 2138, 100 L Ed 2d 771 (1988).

Whenever First Amendment activity is subject to the prior approval of public officials, the approval process

functions as a prior restraint. Prior restraints carry a heavy presumption of unconstitutionality, and they must have adequate procedural safeguards. FW/PBS, Inc. v Dallas, 493 US 215, 228, 238-241, 110 S Ct 596, 107 LEd 2d 603 (1990), DLS, Inc. v City of Chattanooga, 107 F3d 403, 414-415 (6th Cir. 1997) and Nightclubs Inc. v City of Paducah, 202 F3d 884, 888-889 (6th Cir. 2000).

Adequate procedural safeguards require narrow, definite and objective criteria, time limits on decision-making, and prompt judicial review of an adverse decision. FW/PBS, Inc. v Dallas, *supra*, Nightclubs Inc. v City of Paducah, *supra*, and G & V Lounge v Michigan Liquor Control Commission, 23 F3d 1071 (6th Cir. 1994).

The Michigan licensing procedure patently violates the First Amendment since it functions as an unlawful prior restraint.

I C.

IN DENYING CHARACTER CERTIFICATION TO PETITIONER, THE MICHIGAN BOARD OF LAW EXAMINERS IMPERMISSIBLY CONDITIONED ITS DECISION ON DISAPPROVAL OF DUBUC'S PROTECTED FIRST AMENDMENT ACTIVITIES -- HIS CRITICISM OF TWO PUBLIC OFFICIALS. THIS WAS RETALIATORY. THE STATE MAY NOT WITHHOLD A LICENSE BECAUSE IT DISFAVORS CERTAIN SPEECH OF AN APPLICANT.

The MBLE's refusal to certify Petitioner for membership in the State Bar of Michigan because of his protected expression is a patent violation of the First Amendment. Perry v Sindermann, 408 US 593, 597, 92 S Ct 2694, 2697-98, 33 LEd 2d 570 (1972):

> "[I]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited."

The Michigan licensing action violates the unconstitutional conditions doctrine. G & V Lounge v Michigan Liquor Control Commission, *supra* at 1077, Thaddeus X v Blatter, 175 F3d 378, 386 (6th Cir. 1999) and Putnam Pit, Inc. v City of Cookeville, Tenn., *supra*.

Retaliation for the exercise of fundamental rights is unconstitutional.

The speech clause of the First Amendment protects a layperson's opinions that criticize the conduct of public officials. New York Times Co. v Sullivan, 376 US 254, 270-271, 84 S Ct 710, 721, 11 L Ed 2d 686 (1964). The petition clause of First Amendment protects a layperson's complaints about the conduct of public officials. Valot v Southeast Local School District Bd. of Education, 107 F3d 1220, 1226 (6th Cir. 1997).

Petitioner's criticism of two public officials cannot be used to deny him licensing by the State of Michigan. *Cf.* Law Students Civil Rights Research Council, Inc. v Wadmond, 401 US 154, 163, 91 S Ct 720, 726-727, 27 LEd2d 749 (1971).

II.

CONCLUSIONS

The licensing process for membership in the State Bar of Michigan violates the First and Fourteenth Amendments. The regulations are void for vagueness as they permit arbitrary decision-making and they do not afford fair notice to would-be attorneys of what activities might lead to licensing denial. The imprecision in the regulatory process chills protected expression for the same reasons and is overly broad. Gentile v State Bar of Nevada, 501 US 1030, 1082, 111 S Ct 2720, 2749, 115 LEd2d 888 (1991), City of Chicago v Morales, 527 US 41, 52, 119 S Ct 1849, 1857, 144 LEd2d 67 (1999), and United Food & Commercial Workers Union, Local 1099 v Southwest Ohio Regional Transit Authority, F3d 341, 358-362 (6th Cir. 1998).

The Michigan licensing procedure patently violates the First Amendment since it functions as an unlawful prior restraint. There is a complete absence of procedural safeguards. FW/PBS, Inc. v Dallas, 493 US 215, 228, 238-241, 110 S Ct 596, 107 LEd 2d 603 (1990); DLS, Inc. v City of Chattanooga, 107 F3d 403, 414-415 (6th Cir. 1997); and, Nightclubs Inc. v City of Paducah, 202 F3d 884, 888-889 (6th Cir. 2000).

The MBLE's refusal to certify Petitioner for membership in the State Bar of Michigan because of his protected expression is a patent violation of the First Amendment and the unconstitutional conditions doctrine. Perry v Sindermann, 408 US 593, 597, 92 S Ct 2694, 2697-98, 33 LEd 2d 570 (1972), G & V Lounge v Michigan Liquor Control Commission, 23 F3d 1071, 1077 (6th Cir. 1994) and Putnam Pit, Inc. v City of Cookeville, Tenn., 221 F3d 834, 845-846 (6th Cir. 2000). The MBLE's denial of character certification is unconstitutional retaliation for the exercise of fundamental rights. Thaddeus X v Blatter, 175 F3d 378, 386 (6th Cir. 1999).

This Court should grant the writ of certiorari in this case to correct the obvious violations of the First and Fourteenth Amendments in the Michigan licensing procedure for membership in the State Bar of Michigan. The Court should reverse the patently unconstitutional decision of the Michigan Board of Law Examiners, which denied Petitioner character certification because that licensing body disliked his First Amendment activities.

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Dated: August 23, 2001

EXHIBIT A

MICHIGAN SUPREME COURT

[Entered May 29, 2001]

No. 118828

DENNIS DUBUC,
Plaintiff-Appellant,

v.

STATE BOARD OF LAW EXAMINERS,
Defendant-Appellee.

ORDER

On order of the Court, the complaint for superintending control is considered, and it is DISMISSED, because the Court is not persuaded that it should grant the requested relief. The motion for immediate consideration is also considered, and it is GRANTED.

EXHIBIT B

STATE OF MICHIGAN

BOARD OF LAW EXAMINERS

[Dated June 9, 2000]

IN RE: DENNIS DUBUC,
Applicant

OPINION

The statement of issues to be considered by the State Board of Law Examiners is fully set forth in the hearing order of January 25, 2000. In summary, the issues that the Board of Law Examiners are primarily concerned with and which will be addressed in this opinion, deal with the Applicant's involvement in certain litigation and the orders of Contempt and/or sanctions issued against the Applicant.

The Board of Law Examiners conducted hearings in the above matter on April 12, and June 8, 2000. The State Bar exhibits 1-47 were received, as were the applicant's exhibits 1-9. At the time of the hearing on June 8, 2000, the Bar offered into evidence Exhibit #48, which was a copy of the Supreme Court's Order on the applicant's motion for reheating in Livingston County case no. 92-012517-CZ.

Applicant objected both in writing and at the time of the hearing to this exhibit and, in particular, to the concurring opinion of Justice Corrigan. The exhibit was received excepting Justice Corrigan's concurring opinion. Also introduced and received into evidence was applicant's exhibit #10, which was the Complaint filed by the applicant with the State Attorney General and its attachments.

Testifying on behalf of the applicant were Attorney Hugh M. Davis, Jr., Charles R. Clark, Ph.D., and the applicant, Dennis Dubuc. The State Bar did not call any live witnesses.

Unlike most cases that come before the Board on an appeal from the standing committee on character and fitness, this matter involves the actions of the Applicant while representing himself in civil litigation. These actions have resulted in sanctions being awarded against the Applicant by Judge Dennis Murphy in Kalkaska County and by Judge Burress in Livingston County. The latter sanctions being approximately $183,000.00.

In view of the recent Supreme Court order of May 5, 2000, the Board was of the unanimous opinion that the question of the Livingston County Court's sanctions and whether they were appropriate had been decided adversely to the Applicant and was no longer an issue for the Board to resolve.

Mr. Davis, who was Mr. Dubuc's attorney in the federal court action, testified at the first hearing. This heating was prior to the Supreme Court decision affirming the sanctions ordered by the Livingston County Circuit Court.

Much of Mr. Davis' testimony referenced the actions of both the Court and attorney for Green Oak Township, and further summarized the lawsuit that he has filed on behalf of Mr. Dubuc in federal court. While his testimony demonstrated his belief of the allegedly unfair manner in which Mr. Dubuc was treated in the Livingston County Circuit Court matter, he admitted that as Mr. Dubuc's attorney he knew of no facts that would support a claim of bribery or conspiracy against Judge Burress.

Doctor Clark's testimony was consistent with his report which was applicant's Exhibit #9. Doctor Clark testified that Mr. Dubuc's personality is such that he has a tendency to view matters individualistically and he obviously became emotionally involved in his litigation with Green Oak Township. Doctor Clark was of the opinion that in view of the psychological testing, he did not believe Mr. Dubuc's actions in representing himself would be repeated when representing clients. It was further his opinion that Mr. Dubuc exhibited no personality disorders or impairment of any cognitive functions.

The applicant then testified at some length concerning his background, work experience, and involvement with his own litigation. The applicant appears to be a successful, hard-working individual. It is somewhat surprising that in the approximate 25 years since his graduation from undergraduate school, the applicant has been involved, according to his own testimony, in approximately 38 lawsuits. While Mr. Dubuc testified that he was successful in most of these suits, that obviously was not the case in the sanctions of the Livingston County Circuit Court. While this is a significant amount of litigation, it does not form a basis for a determination of a

lack of fitness. The issue for this Board's determination is the manner in which the litigation was conducted and Mr. Dubuc's present character and fitness to practice law.

Applicant expressed a current understanding that perhaps litigation is not the most desirable way to resolve disputes. He testified that it was not until his civil procedure class in law school that he was advised by his professor that the resolution of claims outside of the litigation forum was more productive and desirable way to conduct business. That advice received sometime in 1994 was, according to the applicant, either not appreciated or understood until a later time period, and obviously sometime after his confrontation with Judge Burress in October of 1995.

The Board has considered the various affidavits filed on behalf of Mr. Dubuc outlining the tremendous difficulties he has had in the past with Green Oak Township. The Board is also aware that Mr. Dubuc will apparently have an opportunity to prove these allegations in his pending federal court case. Mr. Dubuc has also testified, without contravention, that since Mr. Clevenger is no longer involved with Green Oak Township, he has been able to construct and occupy a building without difficulty and within a relatively short period of time. All of these factors were presented to the Board to establish the problems in Livingston County were not caused by Mr. Dubuc and to illustrate the merits of his pending federal court case.

The Board understands Mr. Dubuc's frustrations and, to a point, his emotional reactions to the adverse rulings issued by Judge Burress. What the Board cannot understand or accept is Mr. Dubuc's inability or refusal to accept

responsibility for his actions. In listening to Mr. Dubuc's testimony, it becomes apparent that it is his belief that the issues to be reviewed by this Board are not his fault. His current problems are either the Court's fault, opposing counsel's fault, his counsel's fault, or virtually anyone else but himself.

Of primary concern to the Board is Mr. Dubuc's allegations made in open court and contained within his Complaint filed with the Attorney General about Judge Burress being engaged in criminal activity. At a heating September 27, 1995, Mr. Dubuc stated, "It. is you and Mr. Clevenger as co-conspirators against Dennis Dubuc". This allegation was followed by the following statement taken from the transcript dated October 6, 1995:

> I want the court to be aware that I filed criminal charges against yourself yesterday and Mr. Clevenger for conspiracy, for bribery, and bribery attempt, and for abuse of process....

When questioned concerning these allegations, Mr. Dubuc told the Board that what he had meant to say was that the criminal charges of attempted bribery, bribery and conspiracy were filed against Mr. Clevenger but not Judge Burress. Applicant's Exhibit #10 contains, in part, the Affidavit of Dennis Dubuc in support of his criminal complaint filed with the department of the Attorney General, criminal division on October 5, 1995. In that Affidavit, Mr. Dubuc states:

> 40. Your Affiant believes that Judge Burress and Raymond Clevenger are cooperating in a

> conspiracy to destroy Plaintiff and that they both are willing to risk criminal involvement in order to accomplish their means.
>
> 41. Your Affiant has video tapes of fourteen days of trial in which he has been pro se. The transcripts have been ordered and will reveal many acts which constitute obstruction of justice and abuse of process on the part of Judge Burress.
>
> 42. Your Affiant requests that his complaint alleging bribery, attempted bribery, obstruction of justice and abuse of judicial process on the parts of Judge Daniel Burress and Mr. Raymond Clevenger be investigated.

When asked to explain his written complaint filed the day before his in court allegations, Mr. Dubuc stated the complaint was poorly written and it was not his intent to claim that Judge Burress was involved in bribery, but that the Judge knew bribery existed and did not do anything about it.

It is the opinion of the Board that his explanation and refusal or inability to accept the responsibility for his statements is unacceptable. While the attorney for the State Bar referred to a lack of remorse, the Board is more concerned with accepting responsibility for his actions. It is apparent that these allegations were being made with the intent and hope of having Judge Burress removed from his case. His Complaint with the judicial tenure commission was dismissed and the Attorney General's office elected to take no action on his complaint. Allegations such as these are

extremely serious and obviously call into question the entire judicial process. At the time these statements were made, Mr. Dubuc was a mature individual and was apparently in his second year of law school. It is obvious that the allegations made in open court were a follow up to his complaint filed with Attorney General's office and were not inadvertent, but intentional. His explanation concerning these allegations is disingenuous and demonstrates, in the Board's opinion, an inability to accept responsibility for his own intentional actions.

Mr. Dubuc comes before the Board with the burden of proving by clear and convincing evidence that he possesses the requisite character and fitness to practice law in this state. It is unusual and perhaps unique to be confronted with an Applicant for admission to the bar who has so much personal civil litigation experience. In considering the present character and fitness of an Applicant, the Board necessarily looks at the Applicant's past behavior as a guide to the future, and further considers the Applicant's evidence submitted at the time of hearing. Mr. Dubuc came before this Board with sanctions approved by the Michigan Supreme Court of over *$180,000.00*. The circumstances under which these sanctions were granted and how Mr. Dubuc will respond to these sanctions is certainly a factor in considering his character and fitness; but it is not in itself determinative of that issue. His testimony and demeanor in front of the Board dispelled any notion that the Green Oak Township case is an aberration. While, when pressed, Mr. Dubuc would admit that some of his comments and actions were inappropriate, these admissions were too few and too difficult to obtain. His testimony, rather than producing clear and convincing evidence of his fitness to practice law, did just the opposite.

The Board is of the unanimous opinion that Mr. Dubuc failed to meet his burden of proof, and his application is hereby denied.

Dated: June 9, 2000

State Board of Law Examiners
200 Washington Square North, P.O. Box 30104
Lansing, Michigan 48909
(517) 334-6992

July 6, 2000

Robert D. Horvath, Esq.
3250 W. Big Beaver Road, Suite 342
Troy, MI 48084-2902

RE: Dennis Dubuc--Character & Fitness

Dear Mr. Horvath:

This is to inform you that on July 6, 2000, the Board of Law Examiners determined that applicant Dennis Dubuc does not presently possess the requisite character and fitness to practice law in Michigan.

Enclosed is the Board's opinion setting forth the reasons for the Board's decision in this matter.

Very truly yours,

Dennis Donohue,
Assistant Secretary

Enclosure

cc:Lawrence J. Emery, Esq.
Diane Van Aken, State Bar of Michigan

Board of Law Examiners Opinion - 06/09/00

State Board of Law Examiners
200 Washington Square North, P.O. Box 30104
Lansing, Michigan 48909
(517) 334-6992

February 8, 2001

Mr. Robert D. Horvath
3250 W. Big Beaver Road, Suite 342
Troy, Mi 48084-2902

RE: Dennis Dubuc-Character & Fitness

Dear Mr. Horvath:

This is to inform you that on February 7, 2001, the Board of Law Examiners denied the request of applicant Dennis Dubuc for a rehearing of the Board's previous determination that he does not presently possess the requisite character and fitness to practice law in Michigan. The Board also determined that MCL 338.45 does not apply to hearings conducted by the Board of Law Examiners concerning the character and fitness of applicants for admission to the bar.

Very truly yours,

Dennis Donohue,
Assistant Secretary

DD: sl

cc: Diane Van Aken, State Bar-of Michigan

EXHIBIT C

CHAPTER 600 REVISED JUDICATURE ACT OF 1961

REVISED JUDICATURE ACT OF 1961

CHAPTER 9. ATTORNEYS AND COUNSELORS

MCL § 600.934 (2001)

Qualifications for admission to bar; "good moral character" and "resident" defined; election to use multi-state bar examination scaled score; disclosure of score.

(1) A person is qualified for admission to the bar of this state who proves to the satisfaction of the board of law examiners that he or she is a person of good moral character, is 18 years of age or older, is a resident of 1 of the states or territories or the District of Columbia, has the required general education, learning in the law, and fitness and ability to enable him or her to practice law in the courts of record of this state, and that he or she intends in good faith to practice or teach law in this state. Additional requirements concerning the qualifications for admission are contained in subsequent sections of this chapter.

(2) As used in this section:

(a) "Good moral character" means good moral character as

defined and determined under 1974 PA 381, MCL 338.41 to 338.47.

(b) "Resident" includes, but is not limited to, a member of the military service of the United States or its allies who holds a temporary visa or permanent resident visa issued by the United States immigration and naturalization service.

(3) A person may elect to use the multi-state bar examination scaled score that the person achieved on a multi-state bar examination administered in another state or territory when applying for admission to the bar of this state, but only if all of the following occur:

(a) The score that the person elects to use was achieved on a multi-state examination administered within the 3 years immediately preceding the multi-state bar examination in this state for which the person would otherwise sit.

(b) The person achieved a passing grade on the bar examination of which the multi-state examination the score of which the person elects to use was a part.

(c) The multi-state examination the score of which the person elects to use was administered in a state or territory that accords the reciprocal right to elect

to use the score achieved on the multi-state examination administered in this state to Michigan residents seeking admission to the bar of that state or territory.

(d) The person earns a grade on the essay portion of the bar examination that when combined with the transferred multi-state scaled score constitutes a passing grade for that bar examination.

(e) The person otherwise meets all requirements for admission to the bar of this state.

(4) The state board of law examiners shall disclose to a person electing under subsection to transfer the multi-state bar examination scaled score achieved on an examination administered in another state or territory the score the person achieved as soon as that score is received by the board regardless of whether the person could have obtained that score in the jurisdiction in which the examination was administered. This subsection does not require disclosure by the board of the score achieved on a multi-state bar examination administered in another state or territory until the scores achieved on that examination administered in Michigan are released.

APPENDIX D

Supreme Court Rules
Concerning the State Bar of Michigan

Rule 15 - Admission to the Bar

Section 1 - Character and Fitness Committees

(1) A standing committee on character and fitness consisting of 12 active members of the bar shall be appointed annually by the president of the State Bar of Michigan, who shall designate its chairperson. District character and fitness committees consisting of active members of the bar in each commissioner election district shall be appointed, and their chairpersons designated, by the State Bar commissioners within the respective districts, subject to approval by the State Bar Board of Commissioners.

(2) The standing committee and the district committees under its supervision shall investigate and make recommendations with respect to the character and fitness of every applicant for admission to the bar by bar examination and, upon request of the Board of Law Examiners, the character and fitness of any other applicant for admission.

(3) The State Bar of Michigan shall assign staff to assist the standing and district committees in the discharge of their duties.

(4) The standing committee and each district committee shall meet at the times and places designated by their respective chairpersons. Five members of the standing committee or 3 members of a district committee shall constitute a quorum. The action of a majority of those present constitutes the action of a committee.

(5) State Bar recommendations concerning the character and fitness of an applicant for admission to the bar shall be transmitted to the Board of Law Examiners in accordance with the following procedure:

(a) An applicant shall be recommended favorably by State Bar staff without referral to committee when investigation of all past conduct discloses no significant adverse factual information.

(b) In all other instances, applicants shall be referred to the appropriate district committee for personal interview unless the chairperson determines that any adverse information reflected in the file would under no circumstance justify a committee determination that the applicant does not possess the character and fitness requisite for admission, in which event the application shall be transmitted to the Board of Law Examiners with a favorable recommendation.

(c) District committees shall, under the supervision and direction of the standing committee, investigate the character and fitness (other than scholastic) of every applicant referred to them. They shall do so by informal interview and any additional investigation which to them seems appropriate.

District committees shall make a written report and recommendation to the standing committee concerning each applicant referred to them.

(d) Upon receiving a district committee report and recommendation, the standing committee shall endorse the recommendation, take the recommendation under advisement pending the receipt of additional information that it deems necessary, remand the recommendation to the district committee with instructions for further proceedings, or reject the recommendation and conduct a hearing *de novo*.

(e) If the standing committee endorses a report and recommendation of a district committee that an applicant has the requisite character and fitness for admission to the bar, it shall transmit that recommendation to the Board of Law Examiners.

(f) If the standing committee endorses a report and recommendation of a district committee that an applicant does not have the requisite character and fitness for admission to the bar, it shall furnish the applicant with a copy of the report and recommendation and advise the applicant of the right to a formal hearing before the standing committee provided request therefore is made in writing within 20 days. If the applicant requests a formal hearing within the time permitted, a hearing shall be scheduled before the standing committee. If the applicant does not request a formal hearing before the standing committee within the time permitted, the standing committee shall thereupon transmit the report and

recommendation of the district committee to the Board of Law Examiners.

(g) At the conclusion of any hearing conducted by the standing committee it shall transmit its report and recommendation to the Board of Law Examiners.

(6) Each applicant is entitled to be represented by counsel at the applicant's own expense at any stage of character and fitness processing.

(7) Information obtained in the course of processing an application for admission to the bar may not be used for any other purpose or other wise disclosed without the consent of the applicant or by order of the Supreme Court.

(8) Notwithstanding any prohibition against disclosure in this rule or elsewhere, the committee on character and fitness shall disclose information concerning a bar application to the Attorney Grievance Committee on during the course of the commission's investigation of a disciplined lawyer's request for reinstatement to the practice of law. Upon receiving a request for character and fitness information and proof that a disciplined lawyer is seeking reinstatement to the practice of law, the committee shall notify the lawyer that the commission has requested the lawyer's confidential file. The committee then shall disclose to the commission all information relating to the lawyer's bar application. The commission and the grievance administrator shall protect such information, as provided in MCR 9.126(D). The administrator shall submit to a hearing panel, under seal, any information obtained under this role that the administrator intends to use in a reinstatement proceeding. The hearing panel shall determine

whether the information is relevant to the proceeding, and only upon such a determination may the administrator use the information in a public pleading or proceeding.

(9) Any information pertaining to an application for admission to the bar submitted to a district committee, the standing committee, the Board of Law Examiners or the Supreme Court must also be disclosed to the applicant.

(10) A person is absolutely immune from suit for statements and communications transmitted solely to the State Bar staff, the district committee, the standing committee or the Board of Law Examiners, or given in the course of an investigation or proceeding concerning the character and, fitness of an applicant for admission to the bar. The State Bar staff, the members of the district and standing committees and the members and staff of the Board of Law Examiners are absolutely immune from suit for conduct arising out of the performance of their duties.

(11) The standing committee has the power to issue subpoenas (including subpoenas duces tecum), to take testimony under oath, and to rule on the admissibility of evidence guided, but not strictly bound, by the rules of evidence applicable to civil cases. An applicant is entitled to use the committee's subpoena power to obtain relevant evidence by request submitted to the chairperson of the standing committee.

(12) Formal hearings conducted by the standing committee shall be suitably recorded for the later production of transcripts, if necessary.

(13) An applicant is entitled to a copy of the entire record of proceedings before the standing committee at the applicant's expense.

(14) An applicant is entitled to at least 10 days notice of scheduled district committee interviews and standing committee hearings. The notice shall contain the following information:

(a) The time and place of the interview or hearing;

(b) A statement of the conduct which is to be the subject of the interview or hearing;

(c) The applicant's right to be represented by counsel; and

(d) A description of the procedures to be followed at the interview or hearing, together with copies of any applicable rules.

(15) An applicant has the burden of proving by clear and convincing evidence that he or she has the current good moral character and general fitness to warrant admission to the bar.

(16) Upon request made no later than five days prior to a scheduled interview or hearing, the applicant and State Bar staff may demand of the other that they be furnished with the identity of any witnesses to be produced at the interview or hearing as well as an opportunity for inspecting or copying any documentary evidence to be offered or introduced.

(17) If an application is withdrawn following an adverse

recommendation by a district committee or the standing committee, or, if following such an adverse recommendation the applicant fails to appear for further proceedings, the standing committee shall notify the applicant that the application for admission to the bar may not be renewed until the expiration of three years or such lesser period as the committee specifies.

(18) An applicant who has been denied character and fitness certification for admission to the bar by the Board of Law Examiners may not reapply for character and fitness certification for a period of five years following the denial of such lesser period specified in the decision denying certification.

(19) The standing committee may adopt rules of procedure governing the processing and investigation of applications for admission to the bar and proceeding before district committees and the standing committees not inconsistent with these rules.

(20) An applicant is entitled to review by the Board of Law Examiners of any report and recommendation filled with the Board concluding that the applicant does not have the character and fitness requisite for admission.

(21) Every applicant for admission by examination and any other applicant whose application is submitted to the standing committee on character and fitness for evaluation and recommendation shall pay to the State Bar of Michigan a fee of $125 for the character and fitness investigation authorized by this rule. An additional fee of $100 shall be required for character and fitness evaluations related to applications for the February examination that are postmarked after November 1,

and applications for the July examination that are postmarked after March 1.